

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0442
Individual Adjusted Gross Income Tax
For the Periods Ending December 31, 2002 and December 31, 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Adjusted Gross Income Tax

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the assessment is being protested because the Department's calculations are incorrect.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty.

STATEMENT OF FACTS

The taxpayer was a sole proprietor operating a small grocery store located in South Bend, Indiana between November 1, 1999, and February 28, 2003. The taxpayer stated that the store was operated by another individual between November 1, 2002, and February 28, 2003. However the gross receipts of \$314,653 on the taxpayer's 2002 Federal Schedule C closely matches the reported total sales of \$314,652.60 on the 2002 ST-103 returns, which indicates that the taxpayer reported the income from November and December of 2002. Therefore, the taxpayer is also responsible for the January and February 2003 sales and income. The taxpayer sold the business and moved to Michigan in 2003. The taxpayer did not file the 2003 IT-40PRN. Based upon Internal Revenue Service information received for 2002, the taxable business income from Schedule C was divided by the gross receipts (which corresponds to the total sales from the ST-103 returns) to determine a ratio of taxable income to gross receipts. The ratio was applied to the total sales from the ST-103 returns for 2003 to determine the amount the taxpayer would have reported as Schedule C business income. The daily Z tapes from the taxpayer's cash register were examined for the sample months of May and September of 2002.

The taxpayer protested in a timely manner. A letter setting the hearing date and time was sent to taxpayer's representative. The representative failed to appear at the hearing.

DISCUSSION

I. Individual Adjusted Gross Income Tax

Taxpayer's representative contends that the assessment is being protested because the Department's calculations are incorrect.

The Department based the proposed assessments upon the best information it had available. Indiana law provides as follows: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." IC 6-8.1-5-1(a) (*Emphasis added*).

In the taxpayer's case, the Department determined that the "best information available" consisted of the records provided by the Internal Revenue Service and the daily Z tapes for the sample months of May and September of 2002. After obtaining that information, the Department fulfilled its legal responsibility to make a "proposed assessment." Indiana law provides that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b).

The taxpayer's representative failed to appear at the hearing. The Letter of Findings is therefore being written based upon the information contained in the Department's file.

FINDING

Taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Under IC 6-8.1-10-2.1, if the taxpayer fails to pay the full amount of tax due on the tax return on or before the due date of the return, the tax due is subject to penalty and interest. Therefore, the 10 percent penalty plus interest was applied.

FINDING

Taxpayer's protest is denied.